

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 960
CR 24/2020

In the matter between

THE REPUBLIC
(rep. by Mr. Joji John)

and

DL
(rep. by Mr. France Bonte)

Accused person

Neutral Citation: *The Republic v DL* (CR 24/2020) [2019] SCSC 960 17 December 2020
Before: Twomey CJ
Summary: Sentence – second offence of sexual assault- liable to 28 years imprisonment-
sentence of twenty years
Heard: 18 May 2020
Delivered: 17 December 2020

ORDER

The accused is sentenced to twenty years imprisonment.

SENTENCE

TWOMEY CJ

[1] The accused person has been convicted of sexual assault contrary to section 130(1) read with section 130 (2) (d) of the Penal Code and punishable under section 130(1) of the Penal Code.

[2] The particulars of offence are that the accused DL on 25 March 2020 at Perseverance sexually assaulted a person namely ML, by penetrating the body orifice namely the vagina of the said ML with his penis for a sexual purpose.

- [3] Counsel for the convict called for a Probation Report, which was duly provided to the court. The report informs the court that the convict is 48 years old and has four children. He has been employed as a JCB and excavator operator and performs the job of unlicensed taxi operator.
- [4] Counsel for the convict notes that the convict has committed the same offence within a short time of his release from prison and may be suffering from a psychosexual impairment, which he urges the court to take into account. He has also asked the court to take into account that the convict is the sole breadwinner of his family.
- [5] The court notes that the convict was sentenced to ten years imprisonment of the offence of sexual assault on 10 May 2013 and four years imprisonment for obtaining money by false pretences. He was released on licence on 12 June 2018 and committed the present offence eighteen months later.
- [6] The Court also notes the same modus operandi by the accused when assaulting his victims - luring them to an isolated place, sexually assaulting them and then demanding money from them.
- [7] Section 130 (1) of the Penal Code provides in relevant part:

A person who sexually assaults another person is guilty of an offence and liable to imprisonment for 20 years

...

Provided also that if the person is convicted of a similar offence within a period of 10 years from the date of the first conviction the person shall be liable to imprisonment for a period not less than 28 years...

- [8] The sentence in the above provision illustrates not only the seriousness of the offence with which the convict had been convicted – a second offence of sexual assault - but also the severity of the penalty for a second offence of the same nature.
- [9] This court cannot keep repeating the disgust and outrage society feels with regard to the commission of such offences. It now has to deal earnestly with such offenders. Rape victims spend a lifetime attempting to recover from their ordeal and no sentence of

imprisonment imposed on the sex offender will take away the psychological scars inflicted on them. Sex offenders have to be dealt with severely, especially those who reoffend. There is no question of a second chance being afforded to them. A second chance in the present case would present yet another opportunity for the convict to sexually assault another woman. Our children and our women need to be protected from such miscreants.

- [10] I have not been guided by authorities with regard to second offences of sexual assault in this jurisdiction. Sentencing is a discretionary power exercisable by the Court and involves the human deliberation of the appropriate sentence to be imposed for a particular offence in the circumstances of the case. In the present case, the interests of society take precedence over considerations such as the offenders' family circumstances. There is in effect no or little mitigation of the sentence in this case.
- [11] The provisions of section 130(1) of the Penal Code would permit the accused first conviction to fall away after ten years – presumably, he would have been deemed as rehabilitated. However as noted he committed the second offence of sexual assault within eighteen months of his released from jail and six years after his conviction.
- [12] Having taken into account the most important consideration in this case, which ultimately is the protection of members of society and balancing these with other considerations such as the accused's circumstances, I sentence the accused to twenty years imprisonment. It is recommended that he receive psychosexual or related treatment for his obvious sexual predation while in prison.

Signed, dated and delivered at Ile du Port on 17 December 2020

Twomey CJ